(28)

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

(Division Bench)

CORAM : Hon'ble Shri Vijay Kumar Shrivastava, &
Hon'ble Shri Dhirendra Mishra, JJ.

Criminal Appeal No. 2342/1999

Appellant : Madkami Hidmo
@ Hidma, s/o. Shri Mangdu,
aged 30 years, r/o. village
Chitatur (Kochai para),
P.S. and Dist. Dantewara
(CG).

Versus

Respondent : State of Chhattisgarh
Through the Police Station,
Dantewara,
Dist. Dantewara, CG.

Present:

Mr. Ranbir Singh Marhas with Mr. Sourabh Dangi, learned *counsel for the appellant.*

Mr. M.P.S. Bhatia, Panel Lawyer for the State.

J U D G M E N T

(Dated 09/05/2006)

Per Vijay Kumar Shrivastava, J.

This appeal under Section 374 of the Code of Criminal Procedure is directed against the judgment of conviction and order of sentence dated 15/07/1999 passed by II Additional Sessions Judge, Jagdalpur, in Sessions Trial No. 507/93, whereby learned

(29)

Additional Sessions Judge, after holding the appellant guilty for committing the offence of murder punishable under Section 302 of the IPC, sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for one year.

2) Briefly stated the prosecution case is that on 15/08/1993 at about 2.00 p.m. appellant was present in the house of Madkami Mangtu, carrying an arrow and bow, at that time when the deceased Madkami Kamalu came there appellant shot him with an arrow which pierced inside his stomach. Appellant after shooting him with an arrow fled away from the scene of occurrence. Madkami Kamalu was taken to Government Hospital, Dantewada for treatment. Madkami Magtu gave information to Police Station, Dantewada. On his report first information for an offence punishable under Section 307 of the I.P.C., was registered. Deceased Madkami Kamalu was examined by the Medical Officer Dr. R.N. Arya who found severe injuries on his body caused by an arrow. The injuries were grievous in nature. Dr. R.N. Arya referred him to District Hospital, Jagdalpur for further medical treatment. Dying declaration of Madkami Kamalu was recorded on the same date in Government hospital and thereafter Injured Madkami Kamlu was taken to Jagdalpur where he was admitted in Maharani Hospital for treatment. Witnesses were examined under Section 161 of the Cr.P.C. After being cured he was discharged from the hospital by Dr. K.R. Mourya on 01/09/1993. In the meantime, during investigation one bow was seized from the appellant on 16/08/1993 and on the

(30)

same day appellant was arrested. Deceased after being discharged from the hospital came to his village.

3) Deceased Madkami Kamalu was admitted in Government Hospital, Dantewada on 02/09/1993 where during treatment he died on 12/09/1993. An intimation was given by Madkami Hirma to Police. On his report merg intimation was recorded. R.K. Shukla Assistant Sub-Inspector of Police held the inquest, prepared inquest report and sent the dead body for postmortem. Dr. R.N. Arya conducted autopsy who described all the details in his report and opined that the death is caused by septicemia electrolytic disturbances due to peritonitis resulted from post operative, adhesion, gangrenous changes in gut and wound dehiscence of gut which have been previously closed. Offence registered under Section 307 of the IPC against the appellant was converted into offence under Section 302 of the IPC. Further investigation was done and after completion of investigation Police led charge sheet against the appellant in the Court of J.M.F.C., Dantewada who committed the case to the Court of Sessions for trial.

4) Charge under Section 302 of the I.P.C. was framed against the appellant, which was read over and explained to him who abjured the guilt and his defence was that he was insane at that juncture. Learned trial Court after appreciation of the evidence held the appellant guilty for committing the offence of murder and therefore convicted and sentenced him.

(31)

5) Appellant did not dispute the injuries found on the body of the deceased, his death and cause of his death. Dr. R.N. Arya (PW/6) has deposed that on 15/08/1993 he examined injured Kamalu and found the following injuries.

> *1) A penetrating injury entry wound present over left Hypochondrium at level of 9th & 10th ribs. Arrow was inside the body.*
>
> *2) Exit wound also present at right Hypochondrium just below intercostal margin, bleeding present in exit wound.*

He further deposed that in his opinion injuries are grievous in nature caused by sharp and pointed arrow and injury is life threatening in absence of treatment. He referred the patient for further management to Maharani Hospital at Jagdalpur. His report is Ex.P/9.

6) He further deposed that on 12/09/1993 he conducted the autopsy on the dead body of deceased Kamalu. He found pus near peritoneal cavity. Pus was also present over intestine and there was a hole in small intestine. In his opinion the deceased died as a result of shock from septicemia and imbalance of electrolytic disturbances due to peritonitis. His report is Ex.P/11.

7) Nothing has been brought in his cross examination so as to disbelieve his version, therefore, from oral evidence of Dr. R.N. Arya (PW/6), and his report Ex.P/9 and P/11, it was established that the deceased Kamalu was shot by arrow which

(32)

caused penetrating injuries in the level of 9th and 10th ribs, entry and exit wound were present in his body. He died as a result of septicemia and electrolytic disturbances due to peritonitis resulted from post operative, adhesion, gangrenous changes in gut and wound dehiscence of gut which have been closed previously.

8) Madkami Hidma (PW/1) in his statement deposed that the appellant shot with arrow to Kamalu. The arrow pierced his stomach. Appellant after shooting Kamalu fled away from the scene of occurrence. Mangtoo (PW/2) has deposed that at about 2.00 p.m. Madkami Kamalu came to his house and at the same time appellant also came who shot with arrow to Madkami Kamalu. The arrow was pierced the chest of Kamalu. Madkami Kosi (PW/3) wife of deceased Madkami Kamalu in her statement has deposed that after being injured, her husband came running from the spot and told that appellant shot him with arrow. The evidence of all these witnesses also finds support from the first information report i.e., Ex.P/5 duly proved by the witness H.P. Shukla (PW/5) and medical report Ex.P/9 duly proved by Dr. R.N. Arya (PW/6). On close scrutiny of the evidence, we could not find anything substantial to discredit it, therefore, from the above evidence it is established that Kamalu was shot with an arrow by the appellant and as a result of that he was injured.

9) Learned counsel for the appellant contended that at the time of incident the appellant was insane and unable to understand the result of his act, therefore, he is entitled for benefit of Section 84 of the IPC. Per contra, learned counsel for the State

33

has opposed it. If appellant is taking shelter of Section 84 of the I.P.C., the burden lies on him to establish that as a result of unsoundness of mind, he, at the time of incident was incapable of knowing the nature of the act. Although in cross-examination of Madkai Hidma (PW/1) & Mangtu (PW/2), it has been brought that the appellant in village was announcing that he is insane. Some time he was found pelting stones, on his wife and others. Only these sparse incidents that too were not the conduct of an insane person cannot establish the appellant insane or a man of unsound mind. There is nothing on record to establish that on the date of incident his conduct was such which may cause reasonable apprehension that he shot arrow because of his unsoundness of mind. Even from the evidence, it is clear that after shooting he fled away from the spot which itself indicates that the appellant was knowing the consequences of his act, therefore, he fled away from the spot. There is no medical evidence to establish that prior to incident or at the time of incident or soon after the incident the appellant was found insane or of unsound mind. The behaviour of appellant was not such from which it may be inferred that at the time of incident appellant was insane or a man of unsound mind, therefore, the contention raised by the appellant has no force and appellant does not deserve the benefit of Section 84 of the IPC.

10) Learned counsel for the appellant further contended that even if the appellant was not insane, he cannot be held guilty for committing the offence of murder because neither he intended to kill the deceased nor he was knowing that by his act deceased

(34)

Kamalu would die. Per contra, learned counsel for the State submits that Kamalu died due to septicemia as a result of injuries caused to him, therefore, appellant is guilty under Section 302 of the IPC.

11) Dr. K.R. Mourya (PW/7) in his statement deposed that Kamalu was treated in Maharani Hospital, Jagdalpur from 15/08/1993 to 01/09/1993 and after his recovery he was discharged on 01/09/1993. As per prosecution case, he was admitted in Primary Health Centre, Dantewada on 02/09/1993 where he was under treatment and during treatment he died on 11/09/1993. It is manifest from postmortem report Ex.P/11 that peritoneal cavity filled with pus plaques, loops of gut were inflamed, adhered to each other, covered with pus plaques, mesentry congested and inflamed covered with pus plaques, loop of gut were difficult to separate. Perforation seen in small gut, stomach filled with brownish fluid. Conclusion arrived was that of post operative adhesion with peritonitis. The above findings are suggestive of peritonitis resulted from wound of gut which had been closed during Exploratory Laprotomy. Peritonitis have also developed due to gangrenous changes in gut. The above facts clearly unveil that the cause of death was not the direct result of injury, but was the result of his post operative negligence.

12) There is no evidence regarding his intention to kill or knowledge that he was knowing that his act would imminently cause the death of deceased, but it is established that appellant voluntarily caused by means of an arrow a sharp pointed weapon

35

grievous injuries to Madkami Kamalu (deceased) which were dangerous to life. Therefore, appellant was not guilty of offence of murder but was guilty of offence of voluntarily causing grievous hurt to Kamalu by means of sharp pointed dangerous weapon i.e., arrow.

8) In the result, the appeal is partly allowed. The conviction awarded under Section 302 of the IPC and sentence imposed on the appellant by the trial Court are set aside and instead appellant is convicted under Section 326 of the IPC and sentenced to undergo rigorous imprisonment for 10 (ten) years and to pay a fine of Rs.500/-, in default of payment of fine to further undergo RI for five months.

Sd/-
V.K. Shrivatava
Judge

Sd/-
Dhirendra Mishra
Judge

Raju